

**United States Department of Labor
Employees' Compensation Appeals Board**

J.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sykesville, MD, Employer**

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**Docket No. 20-0141
Issued: December 31, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

On April 8, 2019¹ appellant filed a timely appeal from a February 21, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned Docket No. 20-0141.³

¹ The Board's electronic filing system indicates that a notice of an intent to appeal was initially received on April 8, 2019. The Board received an updated AB-1 form on October 22, 2019.

² Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, it was asserted that oral argument should be granted because her torn rotator cuff happened at work "for reasons out of her control." The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

³ The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On December 27, 2018 appellant, then a 48-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 23, 2018 she sustained a right shoulder rotator cuff tear when she moved six boxes of copy paper while in the performance of duty. She did not stop work. In support of her claim, appellant submitted a January 7, 2019 statement in which she referenced a prior claim in OWCP File No. xxxxxx206.⁴

In a January 7, 2019 statement, the employing establishment noted appellant's prior occupational disease claim under OWCP File No. xxxxxx206, for the same date of injury, which was denied.

By decision dated February 21, 2019, OWCP accepted that the April 23, 2018 employment incident occurred, as alleged, but denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish that a medical condition was diagnosed in connection with the accepted employment incident.

The Board has duly considered the matter and concludes that this case is not in posture for decision.

OWCP's procedures provide that cases should be administratively combined when a new injury is reported for an employee who previously filed a claim for a similar injury and further indicates that the cases should be administratively combined as soon as the need to do so becomes apparent.⁵ The record reflects that appellant filed an occupational disease claim in OWCP File No. xxxxxx206 and, thereafter, filed the current traumatic injury claim for the same condition. As both claims involve an injury to appellant's right shoulder, the claims must be administratively combined for a full and fair adjudication of appellant's present claim. This will allow OWCP to consider all relevant claim files and accompanying evidence in developing appellant's current traumatic injury claim.

On remand OWCP shall administratively combine OWCP File Nos. xxxxxx115 and xxxxxx206. After combining these two case records, it shall consider the evidence contained in the combined case record and, following any necessary further development, issue a *de novo* decision.

Accordingly,

⁴ The Board notes that appellant filed a prior claim in OWCP File No. xxxxxx206 alleging that, as of April 2018, she had sustained a right torn rotator cuff due to factors of her federal employment.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8(c)(1) (February 2000); *see R.R.*, Docket No. 20-0911 (issued October 30, 2020); *T.M.*, Docket Nos. 09-1090 & 09-2226 (issued March 8, 2010).

IT IS HEREBY ORDERED THAT the February 21, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 31, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board